

General Information Letter: Contributions made to the Bright Start college savings pool in taxable years beginning on or after January 1, 2002, are subtracted from base income of individuals.

April 12, 2002

Dear:

This is in response to your letter dated March 19, 2002 in which you state the following:

We have opened Bright Start accounts for our two children and I am hoping you can provide me with some clarification regarding state income tax deductions for contributions made by grandparents.

Specifically, can my parents, who are residents of the State of Illinois, receive a deduction on their state income tax if they make a contribution to the accounts that we have opened up for our children (their grandchildren)? If so, where is this deduction claimed on the IL-1040?

If not, would my parents have to open up separate accounts for their grandchildren in order to be able to claim the deduction?

I spoke today to a representative of the Bright Start program who told me that whom ever writes the check receives the deduction. – they simply have to present proof of payment. When I called the Illinois Department of Revenue for clarification, I was told that they didn't have enough information to give me a specific answer and they recommended that I contact your office.

Thank you in advance for any clarification you may be able to provide.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Illinois taxation of Section 529 plan participants and beneficiaries

Section 16.5 of the State Treasurer Act, 15 ILCS 505/16.5, provides that the State Treasurer may establish and maintain a College Savings Pool in order to provide investment opportunities to persons seeking to finance the costs of higher education. The State Treasurer has titled the College Savings Pool program "Bright Start." Section 16.5 also states that the assets and income of a Bright Start program shall be exempt from all taxation by the State of Illinois.

Under the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq.*), a taxpayer's Illinois base income is generally equal to his, her or its federal taxable income, adjusted by certain statutorily prescribed addition and subtraction modifications (See IITA §203). IITA Section 203(e)(1) defines "federal

taxable income" for this purpose as the taxpayer's *"taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code."*

An individual's Illinois base income is equal to his or her federal adjusted gross income, modified by certain statutorily prescribed addition and subtraction amounts. As indicated above, Section 16.5 of the State Treasurer Act exempts the assets and income of a Bright Start program from all taxation by the State of Illinois. In addition, Section 16.5 of the State Treasurer Act exempts from Illinois tax earnings accrued on investments in a Bright Start program upon distribution on behalf of a designated beneficiary to the extent used to pay qualified expenses. See Department Regulations §100.2470(g)(5). Finally, IITA Section 203(a)(2)(Y) provides individuals a subtraction modification in the computation of base income for taxable years beginning on or after January 1, 2002 in an amount equal to all moneys contributed during the taxable year to a Bright Start program.

Based on the above, Illinois' taxation of contributions to a Bright Start account is as follows:

The subtraction modification provided under IITA Section 203(a)(2)(Y) applies to contributions made to a Bright Start program. Therefore, contributions made to a Bright Start program are not subject to Illinois income tax.

With respect to the identity of the individual(s) who make contributions made to a Bright Start program, the subtraction modification provided under IITA Section 203(a)(2)(Y) is not limited to the parents of the plan beneficiary or to the individual(s) who opened the account. As such, the grandparents of a plan beneficiary would be entitled to claim a subtraction modification for contributions made to a Bright Start account even if they did not open such account. The subtraction modification would be claimed on Line 9 of the 2001 Form IL-1040.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Matthew S. Crain
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